UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALFRED DOTY, Plaintiff, v. FCI FT. DIX WARDEN JORDAN HOLLINGSWORTH; UNIT MANAGER BARBARA NEVINS; UNIT OFFICER JASON BAZYDLO; UNKNOWN UNIT OFFICERS #1-#10, Defendants.	:	Civ. No. 15-3016 (NLH) (JS) OPINION

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HILLMAN, District Judge

This case concerns an assault that Plaintiff Alfred Doty, a former federal prisoner, suffered at the hands of another inmate while incarcerated at FCI Fort Dix ("Fort Dix"), New Jersey. In the second amended complaint ("SAC"), Plaintiff alleges that

former Fort Dix Warden Jordan Hollingsworth, FCI Fort Dix Unit Manager Barbara Nevins, and Unit Officer Jason Bazydlo ("Defendants") failed to protect him from the assault in violation of the Eighth Amendment. ECF No. 33.

At issue is Defendants' Motion for Summary Judgment, which is ripe for adjudication. See ECF No. 77. The Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this case concerns a federal question. For the reasons that follow, the Court will grant the Motion.

I. BACKGROUND

A. Undisputed Facts

1. General Operations and Procedures at FCI Fort Dix

FCI Fort Dix is a federal prison which houses low security, sentenced federal inmates. ECF No. 82-1 ¶ 3. Inmates at Fort Dix are assigned to one of several housing units in the East or West Compound. ECF No. 85-1 at 18 ¶ 1. The compounds are distinct and secure areas consisting of several buildings including dormitory style housing, inmate recreation, education, and food services. ECF No. 82-1 ¶ 3. Inmates are prohibited from entering any housing unit other than the one to which they are assigned unless they have received authorization. ECF No. 85-1 at 18 ¶ 1. Inmates found in a housing unit other than their assigned one without authorization should be issued an incident report and are subject to disciplinary action. Id.

The inmates can move about their compound during ten-minute "moves." ECF No. 82-1 ¶ 4. After the move has ended, the inmate must wait until the next move to relocate. Id. However on weekend afternoons, Fort Dix operates as an "open compound" and inmates may move freely around their compound for approximately an hour until afternoon recall. Id. ¶ 6. During open compound, entrances to the housing units are left unlocked. Id. ¶ 7. The officers are supposed to monitor the doors during moves and should prevent unauthorized inmates from entering the housing units. Id. ¶ 9. The housing officer must permit inmates to get to their next destination and therefore must track entry to the housing unit as much as possible while also allowing inmates to change location. Id. ¶ 10. The officers use census counts and other tools to check inmates' location throughout the day. Id. ¶ 13. Correctional Officers and other prison employees are "responsible for the accountability of all inmates in their assigned areas, details, and housing units." ECF No. 85-1 at 18 ¶ 2. Any officer who does not take action to maintain inmate accountability could be disciplined. Id. at 19 ¶ 4.

2. Events up to and including the assault

On Saturday, August 24, 2013, Plaintiff was assigned to Housing Unit 5711 ("Unit 5711") within the East Compound. ECF No. 82-1 ¶ 14. Defendant Jason Bazydlo was a correctional

officer serving as the Unit Officer for Unit 5711 at that time. Id. ¶ 15. He was responsible for approximately 366 inmates in the three-floor unit. ECF No. 85-1 at 22 ¶ 17. He made it his practice to conduct random and irregular rounds throughout the unit to avoid establishing a pattern that inmates could anticipate. Id. at 21 ¶ 11. During moves, he sometimes stayed by the door and sometimes moved throughout the unit. Id. ¶ 12. He also did this during the weekend lunch period. Id.

Before August 24, 2013, Officer Bazydlo and Plaintiff had only interacted with each other when Officer Bazydlo delivered Plaintiff's mail. ECF No. 82-1 ¶ 16. Plaintiff never told Officer Bazydlo that he felt his physical safety was at risk before August 24, 2013. Id. Plaintiff also had never spoken or otherwise communicated with Unit Manager Barbara Nevins or Warden Jordan Hollingsworth about his personal safety prior to August 24, 2013. Id. ¶¶ 17-18.

On Thursday, August 22, 2013, another inmate woke Plaintiff up from a nap to ask if Plaintiff wanted to fight. Id. ¶ 19. The inmate did not reside in Unit 5711. Id. ¶ 20. There was no physical altercation at that time, and Plaintiff did not report to Defendants or anyone else at Fort Dix that he had been physically threatened by an inmate who did not reside in his housing unit. Id. ¶ 22. Plaintiff testified that he did not fear for his physical safety after the August 22 incident. Id.

¶ 23. Plaintiff did not receive any threats on Friday, August 23, 2013. Id. ¶ 24.

On the morning of August 24, 2013, an intoxicated inmate was found in Unit 5711 and was scheduled to be transported to the Special Housing Unit ("SHU"). ECF No. 85-1 at 22 ¶ 18. Officer Bazydlo was not yet on duty when the intoxicated inmate was discovered. Id. No inmates from other units had prior permission to be in Unit 5711 on August 24, 2013. Id. ¶ 19. After the 10:00 morning count and before lunch, Plaintiff went down to the sally port, an area around the door where inmates congregate ahead of leaving the building. ECF No. 82-1 ¶¶ 25-26. Plaintiff arrived at the sally port first and was alone with Officer Bazydlo. Id. ¶ 27. Officer Bazydlo later quoted Plaintiff as telling him that "If you go upstairs later with a breathalyzer, you'll catch a lot of them. Hooch is getting bad here, there is a whole black market and it's getting violent." Id. ¶ 31. This was the first time Plaintiff had reported the production of intoxicants in the unit or expressed concerns about unauthorized inmates. Id. ¶ 33. Although Plaintiff apparently witnessed people in his unit drinking homemade intoxicants several times a week, he had never seen them be violent or threaten violence. Id. ¶ 36. Plaintiff did not tell Officer Bazydlo that he felt at risk of physical harm. Id. ¶

29. Plaintiff stopped talking to Officer Bazydlo when other inmates started filling the sally port. Id. ¶ 32.

Officer Bazydlo believed Plaintiff's report to be a general statement about potential violence that was not worth reporting to a lieutenant. ECF No. 85-1 at 23 ¶ 20. He would be required to report a specific threat of violence to his lieutenant. Id. at 21 ¶ 14. He could not recall what he did in response to Plaintiff's report, but he testified that he would not have deviated from his normal routine of making random and irregular rounds throughout the unit. Id. at 23 ¶ 21.

Plaintiff went to lunch following his conversation with Officer Bazydlo, and then went to the pill line. ECF No. 82-1 ¶ 37. He returned to his housing unit after receiving his medication. Id. ¶ 38. As it was a Saturday afternoon, Fort Dix was operating as an open compound and Plaintiff was able to move freely around without waiting for a ten-minute move. Id. ¶ 39. When Plaintiff returned to the housing unit, the door was unlocked. Id. ¶ 40. Plaintiff did not see a guard at the entrance and the door to the guard's office was closed. Id.

Plaintiff went to the restroom on the first floor, down the hall from the entrance door. Id. ¶ 41. Upon exiting the stall, Plaintiff was confronted by an inmate he identified as "Jefferies." Id. ¶ 42. Jefferies was not housed in Unit 5711 and was not authorized to be in that housing unit on August 24,

2013. Id. ¶ 43. Jefferies is also not the inmate who had awoken Plaintiff the day before. Id. ¶ 21. Jefferies had been waiting for Plaintiff and said he heard Plaintiff had problems with him. Id. ¶ 44. Plaintiff told Jefferies that he did not have a problem with him, but he did have a problem with the way Jefferies treated Plaintiff's friend and roommate, Russell Ochocki. Id. ¶ 45. Plaintiff claimed that Jefferies had been pressuring Ochocki to buy commissary for him under threat of physical assault. Id. ¶ 46. Plaintiff asserted that Jefferies had slapped Ochocki, leaving a bruise, and stolen Ochocki's commissary items when Ochocki did not buy the items Jefferies requested. Id. ¶ 47. This incident was never reported to the officials at Fort Dix. Id. Plaintiff and Jefferies had never spoken to each other before the confrontation in the bathroom. Id. ¶ 48.

The last thing Plaintiff remembers about the bathroom confrontation is that Jefferies said something to the effect of "you are nothing but chomos," and Plaintiff responded that "you don't know anything about me." Id. ¶ 49. "Chomos" is a slang term for "child molester." Id. Around 12:50 in the afternoon, Jefferies assaulted Plaintiff, causing Plaintiff to lose consciousness. Id. ¶ 50. Plaintiff does not know what he was assaulted with, and Jefferies was gone by the time Plaintiff regained consciousness. Id. ¶ 51. Plaintiff testified that

when he went to the housing unit officer's office after he was assaulted, he saw another officer with Officer Bazydlo. Id. ¶ 52. Plaintiff further testified that Officer Bazydlo said to that other officer: "I hope this isn't in retaliation for what he told me this morning." Id.[1]

Jefferies' assault on Plaintiff caused Plaintiff to sustain a fractured skull, fractured orbital bones, fractured left cheek, split hard pallet, a broken tooth, and lacerations on his upper and lower lips. Id. ¶ 53. Plaintiff did not know Jefferies was upset with him until immediately before Jefferies assaulted Plaintiff in the bathroom on August 24, 2013. Id. ¶ 54. Plaintiff testified that he met another inmate who had been assaulted by Jefferies, but he did not know who that inmate is and did not know if any of the Defendants were aware that Jefferies had assaulted another inmate. Id. ¶ 55.

3. Investigation

As part of the investigation into the assault, Special Investigative Section Department Lieutenant Joyce Tucker showed Plaintiff a photo array and asked if he could identify his assailant. Plaintiff declined to identify Jefferies from the photo array because he was afraid of retaliation. Id. ¶ 57; ECF

[1] The Court notes that Officer Bazydlo denies being in his office with another officer and does not recall making this statement. ECF No. 82-4 103:24 to 104:2. This dispute of fact is not material.

No. 85-1 at 23 ¶ 23. Lieutenant Tucker did not save the photo array because the photographs did not result in an identification. ECF No. 85-1 at 24 ¶ 27. There was a surveillance camera positioned outside of Unit 5711 that would have recorded anyone entering and exiting the unit through the main door on August 24, 2013. Id. ¶ 25. Lieutenant Tucker reviewed footage from that camera, which was recorded around the time of the assault, but it is unknown what happened to the video. Id. ¶ 26. Prison personnel later concluded that a group of inmates from Baltimore was behind the assault. Id. ¶ 24. Some of those inmates lived in Unit 5711, others did not. Id.

4. Supervisory Defendants

In August of 2013, Barbara Nevins was a Unit Manager responsible for the administrative oversight of ten staff members, including the case managers, counselors, and unit team. ECF No. 82-1 ¶¶ 70-71. Much of Unit Manager Nevins' work was administrative, such as overseeing the paperwork for transfers and halfway house referrals. Id. ¶ 72. She was not the immediate supervisor of the correctional staff officers. Id. ¶ 73.

Unit Manager Nevins was not working on Saturday, August 24, 2013. Id. ¶ 76. She received a phone call that afternoon informing her that an inmate had been assaulted in her housing unit; she was asked to come to the prison. Id. After her

arrival at Fort Dix, she walked around the unit and informally talked to other inmates to keep the atmosphere calm. Id. ¶ 77. She was not involved in the formal investigation of the assault and did not speak to Officer Bazydlo about the assault. Id. ¶ 78. Plaintiff did not speak with Unit Manager Nevins before August 24, 2013 or inform her that he felt at risk of assault. Id. ¶ 79. Unit Manager Nevins learned for the first time that inmates were coming into Unit 5711, without authorization, to visit inmates housed in 5711 after August 24, 2013. Id. ¶ 80.

During his tenure as Warden of Fort Dix, Jordan Hollingsworth was responsible for overseeing the management of the facility. Id. ¶ 81. Much of his time was consumed by administrative matters, including staffing matters, although he would be notified of certain assaults. Id. ¶ 82. Warden Hollingsworth did not control the Fort Dix budget and would have preferred to hire more officers throughout his tenure if he could have. Id. ¶ 82. The correctional services chain of command consisted of Warden Hollingsworth, associate wardens, a captain, lieutenants, and correctional officers. Id. ¶ 84.

Warden Hollingsworth did not know Officer Bazydlo, but he did know Unit Manager Nevins. Id. ¶ 85. Prior to August 24, 2013, Plaintiff had never spoken or interacted with Warden Hollingsworth in any way; he never expressed to Warden Hollingsworth any concern that he felt he was at a risk for

assault. Id. ¶ 86. Warden Hollingsworth does not recall whether he was contacted about the assault on Plaintiff when it happened. Id. ¶ 87.

II. STANDARD OF REVIEW

Summary judgment should be granted when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). A disputed fact is material when it could affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Id. at 250. The Court should view the facts in the light most favorable to the non-moving party and make all reasonable inferences in that party's favor. Hugh v. Butler County Family YMCA, 418 F.3d 265, 267 (3d Cir. 2005).

Initially, the moving party must show the absence of a genuine issue concerning any material fact. See Celotex Corp. v. Carrett, 477 U.S. 317, 323 (1986). Once the moving party has satisfied its burden, the non-moving party, "must present affirmative evidence in order to defeat a properly supported motion for summary judgment." Anderson, 477 U.S. at 257. "While the evidence that the non-moving party presents may be

either direct or circumstantial, and need not be as great as a preponderance, the evidence must be more than a scintilla." Hugh, 418 F.3d at 267 (citing Anderson, 477 U.S. at 251).

If the court determines that "the record taken as a whole could not lead a rational trier or fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting First Nat'l Bank of Arizona v. Cities Serv. Co., 391 U.S. 253, 289 (1968)). Rule 56 mandates the entry of summary judgment against the party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp., 477 U.S. at 322.

III. DISCUSSION

The sole remaining claim in the SAC is Plaintiff's failure to protect claim under the Eighth Amendment. The principal issues to be decided are (1) whether Defendants are entitled to summary judgment on Plaintiff's claims that Officer Bazydlo failed to reasonably respond to Plaintiff's warning about the possibility of violence from intoxicated or unauthorized inmates in Unit 5711 and that Warden Hollingsworth and Unit Manager Nevins implemented inadequate policies to prevent unauthorized inmates from entering Unit 5711, and (2) to the extent there may

have been a violation, are Defendants entitled to qualified immunity.

A. Failure to Protect

"[P]rison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of the inmates[.]'" Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)). "While 'prison officials have a duty to protect prisoners from violence at the hands of other prisoners,' injury at the hands of a fellow prisoner itself does not amount to an Eighth Amendment violation." Counterman v. Warren Cty. Corr. Facility, 176 F. App'x 234, 238 (3d Cir. 2006) (quoting Farmer, 511 U.S. at 833–34).

"[T]o establish a failure-to-protect claim, an inmate must demonstrate that (1) he is 'incarcerated under conditions posing a substantial risk of serious harm'; and (2) the prison official acted with 'deliberate indifference' to his health and safety." Paulino v. Burlington Cty. Jail, 438 F. App'x 106, 109 (3d Cir. 2011) (per curiam) (quoting Farmer, 511 U.S. at 834). "[D]eliberate indifference is a subjective inquiry, while risk of harm is evaluated objectively." Betts v. New Castle Youth Dev. Ctr., 621 F.3d 249, 256 (3d Cir. 2010) (citing Atkinson v. Taylor, 316 F.3d 257, 262 (3d Cir. 2003)). To prove the

objective component of his claim, Plaintiff must establish (1) the seriousness of the injury; (2) a sufficient likelihood that serious injury will result under the circumstances present; and (3) the risks associated with the circumstances under which the injury occurred violate contemporary standards of decency. Id. at 257.

Defendants concede that Plaintiff suffered a serious injury, but they argue "there is no evidence of a sufficient likelihood that serious injury would result under the circumstances present during Plaintiff's incarceration, or that the risks associated with the circumstances present violated contemporary standards of decency." ECF No. 77-1 at 41.

Defendants further argue that Plaintiff cannot meet his burden of proof on the subjective deliberate indifference component. In Farmer, the Supreme Court held that "a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety[.]" 511 U.S. at 837. "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. "[S]ubjective knowledge on the part of the official can be proved by circumstantial evidence to the effect that the excessive risk was so obvious that the official

must have known of the risk." Beers-Capitol v. Whetzel, 256 F.3d 120, 133 (3d Cir. 2001). Defendants assert Plaintiff cannot show that they disregarded a known risk to his safety.

1. Officer Bazydlo

Plaintiff argues that Officer Bazydlo's "individual practices as a housing unit officer as well as his response to Mr. Doty's report amounted to deliberate indifference of substantial risks to Mr. Doty and the inmates within Unit 5711." ECF No. 82 at 15. "Having full knowledge that inmate accountability was a top safety concern as expressed in the institutional supplements coupled with his own admission that the housing units were understaffed, Bazydlo consciously disregarded the requirement to man the door during inmate move periods with full knowledge of the risks in not doing so." Id. at 16. "The risk that unaccounted inmates would be free to enter and exit Unit 5711 during 10-minute moves and the entire hour that the door was open during lunch on August 24, 2013, is obvious and Bazydlo's knowledge of that is fairly inferable." Id.

Plaintiff cannot establish that Officer Bazydlo failed to protect him in violation of the Eighth Amendment. There is no evidence in the record that Officer Bazydlo "knew of, but disregarded, 'an objectively intolerable risk of harm.'" Counterman v. Warren Cty. Corr. Facility, 176 F. App'x 234, 240

(3d Cir. 2006)(emphasis in original) (quoting Farmer, 511 U.S. at 846). Plaintiff admitted he was not aware that Jefferies was upset with him until just before the assault in the bathroom. ECF No. 77-4 at 80:11-14. He also admitted the incident between Jeffries and Russell Ochocki, which Plaintiff did not witness, had not been reported to prison authorities. Id. at 71:12-13, 25 to 72:2. Plaintiff also could not identify the other inmate allegedly assaulted by Jeffries, nor could he state with certainty that Officer Bazydlo knew about the prior assault. Id. at 93:4-14, 97:5-7. Plaintiff did not report the August 22 incident, in which an inmate who did not live in Unit 5711 woke Plaintiff up from a nap to ask if he wanted to fight, to Officer Bazydlo and admitted that he did not fear for his physical safety. Id. at 47:9-19.

Plaintiff's "warning" to Officer Bazydlo did not convey a substantial threat of violence. Plaintiff testified that he told Officer Bazydlo "that there were people from other units coming into the building and that there was a lot of wine being made and that they were drinking. There are parties." Id. at 54:8-11. He "suggested that they do a search of the building." Id. at 54:25. He stated this was the first time he had ever told prison authorities about his concerns. Id. at 56:6-8. Plaintiff admitted he did not tell Officer Bazydlo that he felt at risk of physical harm and that he had never seen any

intoxicated inmates become violent or threaten violence. Id. at 79:11-13, 19-22.

Plaintiff's argument against Officer Bazydlo is in essence an argument that Officer Bazydlo should have known there was a substantial risk of serious harm to the inmates of Unit 5711 based on the officer-to-inmate ratio and Plaintiff's warning that there was alcohol being made in the unit by inmates who were not supposed to be there. However, "the mere presence of circumstances from which a reasonable person could infer 'an excessive risk to inmate health or safety' is insufficient; rather, the official must actually make the inference and disregard it." Counterman, 176 F. App'x at 238 (emphasis in original) (quoting Farmer, 511 U.S. at 837). There is no evidence in the record that Officer Bazydlo was aware of a specific risk from Jeffries, nor is there circumstantial evidence that there was an obvious, general danger to inmates in Plaintiff's situation. See Beers-Capitol v. Whetzel, 256 F.3d 120, 131 (3d Cir. 2001).

Even if one assumes that Bazydlo had ignored Plaintiff's warnings about homemade alcohol and its attendant risks to inmate safety, that risk was not the one that ripened into Jefferies's assault on Plaintiff. Jefferies was apparently angry at Plaintiff over his defense of Ochocki, his cellmate, a brewing dispute that Bazydlo knew nothing about. To hinge

liability on harm arising from an unreported risk simply because of a vague warning about an unrelated risk would turn the Defendants into Plaintiff's protector against all risks. The physical harm here is indeed substantial and horrific, but to hold these Defendants responsible something more is required.

While a more generalized risk could be enough, here Plaintiff has provided no evidence that there was a "longstanding, pervasive, well-documented, or expressly noted" history of inmate violence caused by inmates being in units other than their own. Id. Mere knowledge that inmates were in Unit 5711 without authorization is not enough "to create a subjective awareness, on [Officer Bazydlo's] part, of an objectively excessive risk to [Plaintiff's] safety." Counterman, 176 F. App'x at 239. Plaintiff himself admitted that he was not in fear for his physical safety prior to this incident. In the absence of a genuine issue of material fact, the Court grants summary judgment to Officer Bazydlo.

2. Warden Hollingsworth and Unit Manager Nevins

Plaintiff's Eighth Amendment claims against Warden Hollingsworth and Unit Manager Nevins also fail. He argues they are liable as they implemented deficient policies "regarding 10 minute moves and the hour-long open door during lunch on the weekends." ECF No. 82 at 24. "Both Nevins and Hollingsworth would have known that these polices were untenable given the

shortage of officers and the escalating issues throughout FCI Fort Dix." Id.

In order to hold Warden Hollingsworth and Unit Manager Nevins liable based on their policies or practices, Plaintiff must identify a specific policy or practice that they failed to employ and show that: (1) the existing policy or practice created an unreasonable risk of injury; (2) they were aware that there was an unreasonable risk; (3) they were indifferent to that risk; and (4) the injury resulted from the policy or practice. Beers-Capitol, 256 F.3d at 134 (citing Sample v. Diecks, 885 F.2d 1099 (3d Cir. 1989)).

Plaintiff can satisfy this standard by either showing that Warden Hollingsworth and Unit Manager Nevins "failed to adequately respond to a pattern of past occurrences of injuries" like his, or by "showing that the risk of constitutionally cognizable harm was 'so great and so obvious that the risk and the failure of supervisory officials to respond will alone' support finding that the four-part test is met." Id. at 136–37 (quoting Sample, 885 F.2d at 1118).

Plaintiff cannot prove Warden Hollingsworth and Unit Manager Nevins were aware of an unreasonable risk of injury for the same reasons he could not prove Officer Bazydlo was actually aware of an unreasonable risk. Unit Manager Nevins did not know until after August 24, 2013 that inmates were coming into Unit

5711 without authorization. ECF No. 77-4 at 31:17-22. Plaintiff did not inform Warden Hollingsworth or Unit Manager Nevins that he felt unsafe in the unit, and there was no longstanding, obvious history of inmate attacks caused by unauthorized inmates in units other than their own.

Plaintiff cannot rely on the subsequent change in the move policy to prove awareness of a risk. Fed. R. Evid. 407. Nor does the fact that the video footage of the entryway and the photo array are unavailable warrant a spoliation inference in Plaintiff's favor. "The spoliation inference is an adverse inference that permits a jury to infer that 'destroyed evidence might or would have been unfavorable to the position of the offending party.'" Mosaid Techs. Inc. v. Samsung Elecs. Co., 348 F. Supp. 2d 332, 336 (D.N.J. 2004) (quoting Scott v. IBM Corp., 196 F.R.D. 233, 248 (D.N.J. 2000)). "For the rule to apply, it is essential that the evidence in question be within the party's control.

Further, it must appear that there has been an actual suppression or withholding of the evidence." Brewer v. Quaker State Oil Ref. Corp., 72 F.3d 326, 334 (3d Cir. 1995) (internal citation omitted). The photo array was administered by Lieutenant Tucker, who is not a party to this action. There is no evidence Defendants had control over the video footage or

that they actually suppressed the footage. Therefore, spoliation sanctions are not warranted.

Because there are no genuine issues of material fact, Warden Hollingsworth and Unit Manager Nevins are entitled to judgment as a matter of law.

3. Unknown Officers

The SAC also raises claims against Unknown Unit Officers 1-10. Despite the close of discovery some months ago, Plaintiff has failed to identify these John or Jane Doe defendants. Because Plaintiff has failed to identify them and because the time for doing so has since past, the Court must dismiss them without prejudice on its own motion pursuant to Federal Rule of Civil Procedure 21.

Federal Rule of Civil Procedure 21 provides that "on motion or on its own, the court may at any time, on just terms, add or drop a party." Fed. R. Civ. P. 21. See also Blakeslee v. Clinton County, 336 F. App'x 248, 250 (3d Cir. 2009) (affirming dismissal of Doe defendants pursuant to Rule 21). "Use of John Doe defendants is permissible in certain situations until reasonable discovery permits the true defendants to be identified. If reasonable discovery does not unveil the proper identities, however, the John Doe defendants must be dismissed." Id. See also Scheetz v. Morning Call, Inc., 130 F.R.D. 34, 37

(E.D.Pa. 1990) ("Fictitious parties must eventually be dismissed . . . if discovery yields no identities.").

Plaintiff has had more than enough time to allow him to identify the individual John and Jane Doe defendants and thereafter to amend the complaint. Plaintiff has failed to do so. As such, the Court must dismiss the John and Jane Doe defendants. See Blakeslee, 336 F. App'x at 250-51; Adams v. City of Camden, 461 F. Supp. 2d 263, 271 (D.N.J. 2006) (holding that, after a reasonable period of discovery has passed, "[i]t is appropriate, before proceeding to trial, to eliminate [the] fictitious defendants from [an] action under Fed. R. Civ. P. 21.").

B. Qualified Immunity

Defendants further argue they are entitled to qualified immunity on Plaintiff's Eighth Amendment claim. "Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." Taylor v. Barkes, 135 S. Ct. 2042, 2044 (2015) (internal citation and quotation marks omitted). The first prong of the analysis "asks whether the facts, [t]aken in the light most favorable to the party asserting the injury, ... show the officer's conduct violated a [federal] right[.]" Tolan v. Cotton, 572 U.S. 650, 655-56 (2014) (internal quotation

marks and citations omitted) (alterations and omissions in original). "The second prong of the qualified-immunity analysis asks whether the right in question was 'clearly established' at the time of the violation." Id. at 656 (internal citation and quotation marks omitted). "Courts have discretion to decide the order in which to engage these two prongs." Id.

As the Court grants summary judgment on the merits, it is not necessary to address the qualified immunity question beyond noting that Plaintiff has not proven a violation of a constitutional right.

IV. CONCLUSION

For the reasons set forth above, Defendants' motion for summary judgment is granted. An appropriate Order follows.

Dated: November 25, 2019
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.